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File No. O. University/41

Legal DEPARTMENT
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Subject Operations under the Bermudian University Act 1928

P&IF

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B.H.S. 24/4.

Office of the R.L.A.

The question on which opinion is sought is whether the grant of affiliation to the Sophia College for Women under section 39 of the Bombay University Act of 1928 would be in contravention of section 6 of that Act by reason of the College being exclusively for women students.

2. Section 6 provides that no person shall be excluded from membership of any of the authorities of the University or from admission to any degree or course of study on the sole ground of sex, race, creed or class, and it shall not be lawful for the University to adopt or impose any religious test whatsoever relating to religious belief or profession in order to entitle him to be admitted thereto as a teacher or student or to hold any office therein or to graduate thereat or to enjoy or exercise any privileges thereof except where in respect of any particular benefaction accepted by the University such test is made a condition thereof.

3. Section 7 provides that the Senate, the Faculties, the Syndicate, the Academic Council, the Board of Post-graduate Studies and such other bodies as the Senate may declare by Statutes shall be the authorities of the University.

4. There is nothing in the Act to show that the provisions of section 6 are in any way binding on affiliated institutions which are not authorities within the meaning of that term. Section 6 is in Chapter II the provisions of which relate solely to the University. The provisions relating to

affiliated Colleges fall under Chapter XII and section 39 sets out the conditions that are required to be fulfilled by a College applying for affiliation. There is nothing either in this section or in any of the other sections of Chapter XII which imposes a bar on Colleges not to discriminate on the ground of sex, race, creed or caste.

5. The powers of the University under section 4 include inter alia the power to lay down courses of instruction for the various examinations, to guide the teaching in colleges, to inspect colleges and to take measures to ensure that proper standards of teaching are maintained in them. Even the power to inspect an affiliated College is to be exercised only with a view to judging of the efficiency of the College (vide section 41). The College can only be asked to take such action as may appear to the Syndicate to be necessary in respect of any of the matters referred to in section 39(1) and not for any other purpose such as preventing discrimination on the ground of sex etc. of the students admitted to, or receiving instruction in the College. The expression "course of study" in section 6 means any course of study prescribed or recognised as such by the University e.g. under section 24(c) The restrictions under section 6 are imposed on the University itself in respect of such course of study. In other words, no person can be excluded by the University from any course of study prescribed or recognised by it on the ground of sex, race, creed or cla Similar restrictions are not imposed by the Act on affiliated Colleges. It is open to an affiliated College toteach its students courses regognised by the University as well as those not so recognised and

it may also restrict admissions in any manner deemed fit by its own management.

6. In my considered opinion, section 6 will not come in the way of the University granting the application for affiliation in the present case.

D. N. M.
rd/
Remembrancer of Legal Affairs

U.R. to E.D. No. 461, dated 17th January 1941.

B.K.S. 24/4

Statement of the case.

The first question for consideration is whether after the occurrence of a casual vacancy the Vice Chancellor can postpone the holding of the election to fill up the vacancy It is true that there is no express provision either in the Act or in any of the Statutes laying down the period within which any casual vacancy must be filled up But Statute 134 (p.53 of Part II of the Handbook of Bombay University) provides inter alia that on the occurrence of a vacancy the notice of electio.. shall be forwarded to all electors stating the date fixed as the last date for receiving nominations and the date of election. The words "on the occurrence of a vacancy" imply that steps must normally be taken to fill up the vacancy as soon asmay be convenient. The Vice-Chancellor has doubtless the power to postpone the election for a reasonable period on justifiable and not capricious grounds. What is a reasonable period must depend on the facts and circumstances of each case. To postpone the election for an undue length of time would in effect be going against the spirit of the Act and give rise to implications which might affect the proper constitution of the Senate. In my opinion therefore it is obligatory on the Vice-Chancellor to take steps for holding the election as soon as may be convenient after a vacancy has occurred. Section 48 of the Act provides that every election to any authority of the University shall be made according to

the system of proportional representation by means of single transferable vote. It is not stated anywhere that an election in this manner cannot be held when there is only one vacancy to be filled up. In fact it is understood that in the past elections to fill up even one such casual vacancy have been held. Unless therefore it is shown that an election in the manner prescribed in the Act cannot be held to fill up one casual vacancy, it will not be possible for the Vice-Chancellor to postpone the holding of the election beyond a reasonable period.

2. In his note at pages 17 to 21 the Vice-Chancellor states that if the five Fellow who will retire by rotation annually retire or by one before the expiry of their term of offi and if a separate election has consequently to be held in each case, the object of section 48 of the Act, which provides for the election of Fellows according to the system of proportional representation by means of single transferable vote, will be defeated. The remedy for this would be to amend the Act in a suitable manner. It will ~~be~~ not be open to the Vice-Chancellor to postpone the election on this account for under Statute 134 the necessary steps to hold the election must be taken as soon as may be convenient after the vacancy occurs

3. The next question referred to the Remembrancer of Legal Affairs is whether

it is open to the Chancellor to accept the resignation tendered by a Fellow with effect from a future date. The reply to this question is, in my opinion, in the negative. In the absence of any express provision in the Act it will not be possible for the Chancellor to accept the resignation of a Fellow with effect from a date other than that from which resignation is tendered.

4. In view of the importance of the questions raised, the Advocate General is requested to give his opinion.

P.N.M.
Rd/———
Remembrancer of Legal Affairs.

U.R. to the Advocate General, Bombay, No.21-Confl., dated the 14th January 1941.

B.K.S. 24/4

Under section 7 of the Act the Senate is one of the authorities of the University. Section 8 provides that the Senate shall be constituted of the Fellows of the University. Section 13 provides that 25 out of the Ordinary Fellows of the University shall be elected by registered graduates. Sections 14, 15, 16 and 45 of the Act deal inter alia with the tenure of office of the Ordinary Fellows and the vacating of their office. Section 15(i) provides that on the acceptance of the resignation of the office of an Ordinary Fellow by the Chancellor, his office shall become vacant. The Act contains no provision asto the steps which have to be taken on the office of an Ordinary Fellow becoming vacant. Statute 134 made inter alia under section 33 (2)(c) of the Act provides, however that on the occurrence of a vacancy in any of the authorities, the notice of election shall be forwarded to all electors stating the date fixed as the last date for receiving nominations and the date of election. Statute 129 provides that the Vice Chancellor shall have power to fix the date of election.

2. These provisions make it clear that the scheme of the Act and the statutes is that on the occurrence of a vacancy in any of the authorities, the Vice Chancellor has to fix the date of election and thereupon the notice of the election is to be forwarded to all electors as provided by Statute 134. The words "on the occurrence of a vacancy" in Statute 134 clearly import an obligation to issue the notice of election within a reasonable time after the occurrence of the vacancy.

3. It is noticeable that the words used in the Statute are "a vacancy" so that it is clear that the Statute contemplates an election for the purpose of filling a single vacancy which may be created inter alia by the vacating of

office by any one Ordinary Fellow.

4. It is true that the Act does not, like some of the Statutes referred to in the Note of the Vice Chancellor, specifically require that the vacancy shall be filled up as soon as it conveniently may be or within a specified time But in my opinion, the effect of the provisions I have mentioned isto require the vacancy to be filled up within a reasonable time of its occurrence

5 The terms of section 48 of the Act do not in any manner require that the election therein referred to should be an election in respect of more than one office.

6. Section 15(1) of the Act provides that the office of any Ordinary Fellow resigning shall become vacant on the acceptance of his resignation by the Chancellor. Under the section it is open to the Chancellor not to accept the resignation and if he does not accept it, the office will not be vacated. The section however does not contemplate the acceptance of the resignation with effect from a later date which the Chancellor may fix. In my opinion, such an acceptance will not be competent to the Chancellor under the section.

7. I, therefore, agree with the view of the R. L. A. on the two questions raised.

M.C. Setalvad

Sd/-----
Advocate General.
17-1-41.

Rd/----- 17/1

D.K.S. 24/4

Office of the R.L.A:

The Advocate General was consulted in this case. A copy of the Advocate General's opinion together with a copy of the statement of the Case sent to him is forwarded herewith.

Sd/- P.N.M

Remembrancer of Legal Affairs.

U.O. R. to E. D. No. 35-Confl, dated 20th January 1941.

B.K.S. 24/4

Office of the R.L.A.

The question for consideration is whether Dr. Daudpota's proposed resignation and the nomination in his place of the Director of Public Instruction, Sind, is legally objectionable.

2. Dr. Daudpota (in his personal capacity) is an Ordinary Fellow of the Bombay University nominated by the Chancellor.

3. Section 15(1) of the Bombay University Act, 1928, provides that any Ordinary Fellow may, by letter addressed to the Chancellor, resign his office and on the acceptance of the resignation the office shall become vacant. Under section 16(2) any Ordinary Fellow who has vacated his office may, subject to the provisions of this Act, be elected or nominated to be an Ordinary Fellow. Section 13(1)(ii)(B) empowers the Chancellor to nominate 40 Ordinary Fellows of the University.

4. Section 15 of the Bombay General Clauses Act, 1904, lays down that where, by any Bombay Act, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office. The wording of this section follows the wording of section 15 of the General Clauses Act of 1897. As interpreted by the Legislative Department of the Government of India, the expression 'nominate' as opposed to the expression 'appoint' means appoint by name and therefore section 15 of the General Clauses Act cannot be pleaded in support of the process of effecting nominations by virtue of office. (See commentary under section 15 of the General Clauses Act, 1897, 1940 Edition, page 93). This interpretation is presumably based on the Latin derivation: nominare - to name. According to the Oxford New English Dictionary the common

meaning of "nominate" in such context is to appoint a person by name to hold some office or discharge some duty. In the light of this interpretation it would appear that the Chancellor would not be legally competent under section 13(1)(ii)(B) f the Bombay University Act to nominate the Director of Public Instruction, Sind, as an Ordinary Fellow by virtue of his office. I may add that hitherto all nominations of Ordinary Fellows by the Chancellor under section 13(1)(ii) (B) have been by name and not by virtue of office

rd/ P.N.M.

Remembrancer of Legal Affairs.

U.R. to E.D., No.1067, dated the 4th February 1941.

B.K.S. 24/4

Office of the R.L.A.

In view of the deletion of the word "military" from clause (e) of sub-section (2) of section 18 of the University Act, it is doubtful whether the University can make provision for the military training of students. There is however no provision in the Act which debars the University from laying down that it shall grant a particular diploma to such persons as have received military training. In this connection the following observations made by Dewan Bahadur Harilal D. Desai. the Minister who moved in the Legislative Council the bill which sought to delete the words "and military" from clause (e) referred to above, are pertinent :-

"In the Act of 1904 which is in operation there is no provision enabling the University to make provision at all for physical and military training. Yet the University has discussed the question of making physical training compulsory and also the question of making military training compulsory That was done even when there was no provision in the Act In the present Act we make a definite provision: when we authorise them to make a budget provision, they may pass a statute or regulation saying that every student appearing at a degree examination shall have passed through a course of compulsory military training; they may make that condition, and after that they will have to make a budget provision and then approach the Government of India and say 'We have passed this regulation; we want to make military training compulsory; we have made budget provision; will you kindly allow us ?' When a corporate body is authorised to make a budget provision, it is impliedly authorised to consider the object for which that provision is necessary and to do all that may be necessary to achieve it .....

I assure my honourable friend that this amendment does not take away any power of the University for enforcing military training for students who want to pass a particular examination. That power remains with them. It is rather an additional provision that we are making, which will bring to the notice of the University that this is a matter in which they have a duty, because the legislature has provided a new clause.

2. The Statute passed by the Senate in this case provides that the Senate shall grant a diploma in military studies to such persons as have undergone the prescribed course and passed the qualifying examination in accordance with the ordinances and regulations. There is nothing in this Statute which requires the Senate or any other authority of the University to open a school or make other arrangements for imparting military training to students. The Statute itself does not make provision for the military training of students. No objection to the Statute can therefore be taken on this ground. The Senate is competent to make such a Statute under clause (m) of sub-section (2) of section 33 read with sub-section (1) of section 4 of the Act. The Statute is therefore, in my opinion, legally in order.

P.N.M
rd/
Remembrancer of Legal Affairs.

U.R. to E.D. No. 1105 dated the 5th February 1941.

B.K.S. 25/4.

Submitted.

This file has been referred to the E.L.A. along with the linked case kept below. Attention is invited to para.2 of the S.D. office note at p.15 ante; and to the Registrar's letter at p.1 ante requesting the Govt. of India to authorize the Military Authorities in Poona to advise and help the University for the purposes of the organization of the Deptt. and the practical training of students. In view of para.1 of Dy. Gov't.. note in the linked case, the attention of the E.D. may be invited to the opinion in that case.

Yd/——— 27/1

A.S. Yd/———27/1

ALR Yd/———4-2-41.

D.S. Yd/———4/2

B.K.S. 25/4

Office of the R.L.A.

The attention of the Educational Department is invited to R.L.A's opinion No. 1105. dated the 5th February 1941, in the linked case.

P. N. M
Td/———
Remembrancer of Legal Affairs.

U.R to E.D.,No. 1100, dated the 5th February 1941.

B.K.S. 25/4

Office of the R.L.A.

Section 15(2) of the Bombay University Act, 1928, provides that if for a period of twelve consecutive months any ordinary Fellow except a Fellow for life, has not attended a meeting of the Senate, other than a convocation, the Chancellor may declare his office to be vacant. As Rev. H. Heras has not attended any meeting of the Senate since February 1940, the Chancellor can now declare the office to be vacant, his order will take effect as soon as it is passed. In this case, it is suggested that the seat should be declared vacant with effect from 4th August 1941. If this is done, it would be open to Rev. H. Heras to attend meetings of the Senate which may take place before 4th August 1941, and if he does so, the result would be that his seat would on 4th August 1941 become vacant for failure to attend Senate meetings even though shortly before this date he has attended such meetings. This would not be in accord with the spirit of section 15(2). In my opinion, therefore, it would notbe competent for the Chancellor to declare the office of Rev. H. Heras to be vacant with effect from 4th August 1941.

PNM

Yd/-------28/4
Remembrancer of Legal Affairs.
Yd/---- 28/4

U.R. to E.D., No.3798, dated the 28th April 1941.

B.K.S. 25/4

Office of the R.L.A.

The question referred to the Remembrancer of Legal Affairs for opinion is whether under section 8 of the Bombay University Act, 1928, the Administrator of the superseded District Local Board, Nasik, is entitled to exercise the vote on behalf of the superseded Board at the ensuing election of Fellows of the University.

2. In a somewhat parallel case where the question was whether the Administrator of a superseded Municipality can exercise the powers and duties as a Local Authority under the Bombay Shops and Establishments Act, 1939, the Remembrancer of Legal Affairs (Mr. Dhurandhar) in his opinion No.2843, dated 18th March 1940, has held as follows:-

> "As pointed out in R.L.A's U.R. to G.D., No.9394, dated the 20th September 1939 an Administrator of a superseded Municipality is not a Municipality. Moreover during the period of supersession of a Municipality, there would be no Municipality in existence (see R.L.A's U.R. to G.D. No.1999, dated the 23rd February 1940). It seems clear from the provisions of section 219(2) of the Bombay Municipal Boroughs Act, 1925 that the Municipality constituted under that Act and the Administrator i.e. a person appointed by the Commissioner to exercise and perform all the powers and duties of the superseded Municipality, are quite distinct and separate from one another. It, therefore, appears that for the purposes of the Bombay Shops and Establishments Act, 1939, the area within the Municipal Borough of Hubli will, during the period of the supersession of the Hubli Municipality, have to be treated as an area not subject to the jurisdiction of any local authority for the purposes of the proviso to section 23 of that Act and it will be the duty of the Provincial Government to enforce the provisions of that Act within that area."

This opinion of the Remembrancer of Legal Affairs is open to question and I do not agree with the proposition enunciated therein that a Municipality cannot during the period of its supersession be deemed to exist. Local Bodies like Municipalities and District Local Boards are governed by more or less identical provisions of law relating to dissolution and supersession. A District Local Board like a Municipality is a body corporate with perpetual succession. (See section 47 of the Bombay Local Boards Act, 1923). It never ceases to exist

except when the District for which it is constituted is abolished by a Legislative enactment. Even when it is dissolved or superseded it does not cease to exist. The only effect of dissolution or supersession under section 120 is that all members of the Board have to vacate their offices as such members as from the date of the order.

3. The following passage from the case of Mahamahopadyaya Ranganharier vs. Municipal Council of Kumbakonam, I.L.R. XXIX Mad. page 539 at page 543 is pertinent:

> "The provisions as to supersession, which term, by the very contrast involved in its use here as distinguished from dissolution, implies a radically different thing, are framed naturally on quite other lines. No doubt the Municipal Councillors holding office at the time of supersession cease to do so altogether. But the Municipality itself is left intact, the management of its affairs has to be provided for by the appointment of a person or persons to be chosen by the Governor in Council and, though the property held by the Councillors is, during the supersession, vested in the Governor in Council, that is only in trust for the purposes of the Municipality concerned, as section 4-B(3)(a)(iii) must be read along with section 27. To put it otherwise, supersession is nothing more than the dismissal of incompetent Councillors, followed only by the appointment of, to borrow the language of the English law, a custos for the discharge of the functions of the Council pending the nomination or election of other persons who would resume work in the normal way. In a word, supersession is but a suspension of the Council."

4. Under section 131 of the Bombay Local Boards Act, when a Local Board is superseded all powers and ~~xxx~~ duties of the Board may during the period of supersession be exercised and performed by such person or persons as the Provincial Government from time to time appoints in that behalf. It was under this section that the Provincial Government issued Government Resolution, General Department, No. 4329/33, dated the 20th March 1941, superseding the District Local Board, Nasik, for a period of three years and appointing Khan Saheb N.R. Kazi to exercise and perform all the powers and duties of the Board during the period of supersession. It is thus quite clear that the Administrator can exercise and perform all the powers and duties of the Board during the period of supersession. One of these powers is the right to vote at

the University election. This power can, in my opinion, be legitimately exercised by the Administrator on behalf of the superseded Local Board.

P.N.M
Id/——— 20/5
Remembrancer of Legal Affairs

U.R. to C.D., No.4632 , dated the 21st May 1941.

B.K.S. 25/4

Office of the R.L.A.

It appears that the election by the University Teachers and Teachers including Principals, of one seat in the Senate was fixed to be held on 5th July 1941. The last date of nomination was 18th June 1941. Three candidates were nominated: Prof. R.N.Bhagwat, Prof. P.M. Limaye and Prof. P.M.Srinivasachari. The election was to be by ballot at the different polling stations on 5th July 1941. It was proposed to send some officers to some of the polling centres from Bombay and other places Owing to the recent dislocation of the railway service, however, it was not found possible to send these officers. Moreover representations were received urging for the postponement of the elections. A notice was accordingly issued on 4th July postponing the election to 12th July. By another notice dated 8th July the date of election was again postponed to 23rd July. It appears however that in spite of the notice dated 4th July polling took place at some of the centres. On 10th July one of the nominees Prof. Bhagwat, died. In view of these facts the Registrar has raised the following questions for the consideration of the Chancellor:-

(1) Whether the polling as notified should proceed, either on the date last fixed or on a fresh date to which the polling may be further postponed, in view of the continuance of the disturbed conditions of transport and communications:

(2) If the answer to question (1) is in the affirmative whether new voting papers should be substituted for the old voting papers (issued in the names of the three candidates, of whom one is dead);

(3) Whether the proceedings relating to the election should be held de novo, commencing with a fresh notice of

(3) election;

(4) Whether in the event of the answer to question (3) being in the affirmative, the nominated candidates other than Prof. Bhagwat, should submit fresh nominations, if they wish to contest the election;

(5) Whether a fresh election roll needs to be prepared in accordance with Statute 133, or whether the electoral roll on the basis of which the notice of election first issued stands;

(6) Whether the postponement of the polling on the two occasions aforesaid, viz., from the 5th to the 12th and from the12th to the 23rd July, and any further postponement that becomes necessary, would invalidate the election, if the polling takes place without issuing a fresh notice inviting nominations.

The A.L.A. is requested to advise on these x questions.

3. Question No. (1).- Statute 137(b) provides that whenever there is a vacancy in the Senate a listof the nominated candidates shall be forwarded to the electors and shall be published in the Bombay Government Gazette at least 15 clear days before the date of election. The date of election is/ to be fixed by the Vice-Chancellor under Statute 133 and consequently it is within his powers to fix a new date for the election (cf. para.4 of A.L.A's opinion No. 2980 dated 5th June 1933). If, therefore, the date at present fixed is found to be inconvenient there is no objection to fixing a fresh date.

3. Question No.(2).- Statute 146 prescribes the form of the voting paper. Under Statute 147(2) electors have to place figures opposite the names of the candidates for whom they vote As one of the nominated candidates has since died it appears necessary or at least desirable to substitute fresh voting

papers (see 1898, 1 Q.B. 552 at p.554).

4. Question No.(3).- It does not seem necessary to hold all the proceedings afresh. What is required by Statute 137 is that the list of candidates should be published at least 15 clear days before the date of election. There is no provision requiring the election to be held within a particular time of the date of nomination. Consequently it will be sufficient if the date of election alone is changed (cf. para.4 of H.L.A's No.2980 dated 5th June 1933). "If a candidate die between the nomination and the poll, the returning officer must countermand the poll and the election must commence afresh, just as if he had received the writ on the day when the death of the candidate was duly proved, except that no fresh nomination is necessary for candidates already nominated." (Roger on Elections Vol. II, page 107; Halsbury's Laws of England, Vol.12, page 287). In the absence of any provision in the Statutes of the University there is no objection to the aforesaid Parliamentary election practice being adopted for the sake of the principles underlying it and for purposes of justice, equity and good conscience. (See Ramamjulu Naidu v. Parthasarathy Ayyangar 17 M.L.T. 331, quoted and followed in 53 I.C.741 at page 745, and in 50 Cal. 202 at page 208. See also 34 All. 649 at page 653). The election can, therefore, proceed with the nominations already made.

5. Question No.(4).- For the above reason the answer is in the negative.

6. Question No.(5).- Statute 133 only requires that the roll of persons entitled to vote shall be prepared at least 49 clear days before the date of election. It is not therefore necessary to prepare fresh rolls.

B.K.S. 25/4

7. Question No.(6).- As pointed out above the Vice-Chancellor can proceed by altering only the date of election fixed; it is not necessary that the whole procedure should be followed afresh. Besides although votes have been recorded at some of the centres on the 5th July, that voting does not seem to be valid, for the Registrar had already issued a notice on 4th July postponing the election. Consequently there would be nothing illegal in holding the poll on the 23rd July or on a fresh date that might be fixed.

O N M
Jd/—— 21/7
Remembrancer of Legal Affairs
Jd/—— 21/7/41

U.R. to S.D. No. 6418 dated the 22nd July 1941.

B.K.S. 23/7.